

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: **ICC-02/05-01/20**

Date: **18 June 2020**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

**SITUATION IN DARFUR, SUDAN
IN THE CASE OF
THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN
(“ALI KUSHAYB”)**

Public Document

**Request to Provide Written Reasoning for Two Oral Decisions
Delivered at the First Appearance Hearing**

Source: Mr Cyril Laucci, Duty Counsel

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Mr James Stewart, Deputy Prosecutor

Counsel for the Defence

Mr Cyril Laucci, Duty Counsel

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta, Principal Counsel

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Esteban Peralta-Losilla

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

BACKGROUND TO THE REQUEST

1. On 15 June 2020, the first appearance hearing of Mr Ali Muhammad Ali Abd-Al-Rahman was held before the Honourable Judge Rosario Salvatore Aitala, sitting as Single Judge of Pre-Trial Chamber II.
2. At this hearing, the Honourable Single Judge delivered the following two oral decisions.
3. When the Honourable Single Judge asked the court officer to read out the charges, Duty Counsel made it known that Mr Ali Muhammad Ali Abd-Al-Rahman was waiving his right for the charges to be read out at the hearing and suggested omitting this step. In response to this request, the Honourable Single Judge delivered the following oral decision: “[I]t is the view of the Single Judge that the charges should be [...] read” (transcript ICC-02/05-01/20-T-001 ENG, p. 6, lines 22-23). No reasons were given orally for the Honourable Single Judge’s decision ordering the charges to be read out in full at the hearing against Mr Ali Muhammad Ali Abd-Al-Rahman’s will.
4. Once the charges had been read out in full, Duty Counsel informed the Honourable Single Judge that, with the Honourable Single Judge’s leave, Mr Ali Muhammad Ali Abd-Al-Rahman wished to be able to observe a minute of silence and reflection in memory of all the victims in Darfur, and more generally, in Sudan, at this first public hearing in this case relating to the situation in Darfur. The Honourable Single Judge denied him such leave, merely stating as his reasons that “this is not the place to do this. We will all do this individually and at the International Criminal Court we do this very often, we always think about the victims. So this request now is rejected” (transcript ICC-02/05-01/20-T-001 ENG, p. 22, lines 10-12).

5. At the hearing, Duty Counsel requested that the reasoning for the two decisions above be provided at a later date (French version of the transcript ICC-02/05-01/20-T-001 FRA, p. 22, lines 5-6). That oral request forms the subject matter of the present Request.

SUBJECT MATTER OF THE REQUEST

6. Article 74(5) of the Rome Statute provides that decisions rendered by the Honourable Judges of the Court must be reasoned. While this article applies primarily to decisions rendered by a Trial Chamber at the close of a trial, its ambit has been broadened to encompass all decisions rendered by the Honourable Judges of the Court, including in its Pre-Trial Chambers. The Appeals Chamber, ruling on an appeal against a decision issued by Pre-Trial Chamber I, made the following determination in particular (original English):

The reasons for a decision should be comprehensible from the decision itself. It is not sufficient for the Pre-Trial Chamber to identify simply which filings were before it. The decision must set out which of the relevant facts and legal arguments that were before the Pre-Trial Chamber were found to be persuasive for the determination it reached. [...] The Appeals Chamber will not consider the other arguments of the Prosecutor, which address the question of whether the authorisation of the redactions was justified. This question must be distinguished from whether the reasoning of the Impugned Decision was sufficient: it may well be that there was good cause for the Pre-Trial Chamber to authorise the redactions. The question that arises under the first ground of appeal, however, is not whether the redactions were justified but whether the factual reasoning in the Impugned Decision was sufficient.¹

7. The two aforementioned oral decisions delivered by the Honourable Single Judge do not include any statement of their reasons.
8. No reasons are given for the first decision to have the charges read out in full at the hearing, against Mr Ali Muhammad Ali Abd-Al-Rahman's express will, other than that it is the "view" of the Honourable Single Judge. This "view" is

¹ ICC-01/04-01/06-774: "Judgment on the Appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81'" (OA 6), 14 December 2006, <https://www.legal-tools.org/doc/2b7ca3/pdf>, paras. 33-34.

wholly respected, but Mr Ali Muhammad Ali Abd-Al-Rahman now wishes to be informed of the reasons. Mr Ali Muhammad Ali Abd-Al-Rahman notes that this decision runs counter to the practice of the Honourable Pre-Trial Chamber II in other cases, such as at the two first appearances of the suspects in case ICC-01/14-01/18 (French version of the transcript ICC-01/14-01/18-T-001 FRA, p. 6, lines 2-7; French version of the transcript ICC-01/14-01/18-T-002 FRA, p. 4, lines 25-28 to p. 5, lines 1-2). Mr Ali Muhammad Ali Abd-Al-Rahman's wish to be informed of the reasons for departing from this practice is therefore legitimate.

9. The Honourable Single Judge explained his second decision, refusing the minute of silence requested, by stating: "We will all do this individually and at the International Criminal Court we do this very often, we always think about the victims. So this request now is rejected" (transcript ICC-02/05-01/20-T-001 ENG, p. 6, lines 22-23). Given that Mr Ali Muhammad Ali Abd-Al-Rahman was appearing for the very first time before the International Criminal Court, this "we" cannot possibly include him. The purpose of his request to observe a minute of silence was precisely to be able to join and become part of this "we" by joining his prayers with those of the Court in memory of the victims. Rejecting his humble request *de facto* excluded Mr Ali Muhammad Ali Abd-Al-Rahman from this collective "we" which he hoped to join. The presumption of innocence afforded to him under article 66 of the Rome Statute makes incomprehensible to him this denial of leave to join in the Court's prayers for the victims. In submitting the present Request, he is therefore exercising his legitimate right to be informed of the reasons for this denial by the Honourable Single Judge.
10. Mr Ali Muhammad Ali Abd-Al-Rahman appreciates that the particular pace of a public hearing does not lend itself to a comprehensive statement of the reasons for a decision issued by the Honourable Single Judge in his manner of

conducting the hearing. He has therefore waited to seek the full statement of those reasons with the submission of this Request.

FOR THESE REASONS,

DUTY COUNSEL HUMBL Y PRAYS THE HONOURABLE SINGLE JUDGE to provide detailed written reasoning for the two aforementioned oral decisions.

[signed]

Mr Cyril Laucci, Duty Counsel

Dated this 18 June 2020

At The Hague, Netherlands